

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. _____
)
ROGER DEAN NEWMAN,)
)
 Defendant.)

PLEA AGREEMENT

The United States, by and through Todd P. Graves,
United States Attorney for the Western District of Missouri, and
K. Michael Warner, Assistant United States Attorney for said
District, and the defendant, ROGER DEAN NEWMAN (hereafter
defendant), by and through his counsel, Larry Pace, enter into
the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the
Federal Rules of Criminal Procedure:

1. Defendant's Guilty Plea. Defendant agrees to and hereby
does plead guilty to Counts One through Five of the Information,
charging him with mail fraud and wire fraud contrary to the
provisions of Title 18, United States Code, Sections 1341 and
1343. By entering into this Plea Agreement, the defendant admits
that he knowingly committed, and is in fact guilty of, these
offenses.

2. Factual Basis for Guilty Plea. To furnish a factual basis to support his guilty pleas to the charges contained in the Indictment, the defendant admits the following is true:

From on or about June 19, 2001, to on or about December 11, 2004, ROGER DEAN NEWMAN, doing business as owner/operator of Newman Funeral Home, Unionville, Missouri, devised and executed a scheme to defraud within the Western District of Missouri by making false statements, representations, promises, and omissions for the purpose of obtaining funds or money from three different insurance companies, totaling over \$403,000.00, by use of mail or electronic, facsimile or telephonic transmissions or communication. The purpose of the scheme was to receive unauthorized, funeral expense, death-benefit, insurance claim payments. The claims were submitted previously by defendant via phone or facsimile, for individuals or insured persons who were not in actuality deceased. Insurance company payments were either generally mailed or electronically forwarded to him. Defendant's aggregate fraudulent conduct involved approximately 59 separate individuals, and Forethought Insurance Company, Batesville, Indiana, Homesteader's Insurance Company, Des Moines, Iowa and Missouri Funeral Trust, Inc., St. Louis and Jefferson City, Missouri. The purpose of defendant's scheme to defraud was to obtain unauthorized funds or money for self-enrichment or for his own personal use.

3. Factual Admissions. The defendant knows, understands, and agrees that the admissions in this paragraph, the preceding paragraph, and paragraphs 12 and 15 will be used for the purpose of calculating his offense level and determining his sentence under the United States Sentencing Guidelines.

4. Statutory Penalties. Defendant understands that upon his plea of guilty to the charges of mail fraud as alleged in Count One, the maximum penalty the Court may impose is five years imprisonment, a fine of Two Hundred and Fifty Thousand dollars (\$250,000) or both.

Defendant further understands that upon his plea of guilty to the charges as alleged in Counts Two through Five, the maximum penalty the Court may impose is 30 years imprisonment, a fine of One Million dollars (\$1,000,000), or both.

Defendant further understands that, pursuant to Title 18, United States Code, Section 3013, he is subject to a mandatory special assessment of One Hundred dollars (\$100.00), for each count of conviction, which is to be paid to the Crime Victim Fund and which defendant agrees to pay in full at the time this Plea Agreement is presented to the court.

5. Guideline Sentencing Procedures. Defendant understands the following:

a. that the United States Sentencing Guidelines promulgated by the United States Sentencing Commission are applicable to this case;

b. that the Court will determine the defendant's applicable sentencing guideline range at the time of sentencing;

c. that the Court may impose a term of supervised release of up to five (5) years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one-year is imposed;

d. that if the Court revokes supervised release, an additional period of imprisonment of up to five (5) years could be imposed, without credit for time previously spent on supervised release and that in addition to a new term of imprisonment, the Court may, at its discretion, impose a new period of supervised release;

e. that the Court may impose any sentence authorized by law, including a sentence that, under some circumstances, departs from any applicable sentencing guidelines range;

f. that the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the sentencing guideline range offered by the parties or the United States Probation Office; and

g. that defendant may not withdraw his guilty plea solely because of the sentence imposed by the Court.

6. Government's Agreements. The defendant understands that this Plea Agreement is only between the defendant and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority, except as specified herein. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this Plea Agreement, agrees not to bring any additional charges against defendant for any federal criminal offense related to the defendant's fraudulent conduct or scheme to defraud for which it has venue and arising out of the defendant's conduct described above, and the government's Information.

In this regard, defendant recognizes that the United States has agreed not to prosecute all of the criminal charges which the United States believes the evidence establishes were committed by the defendant during the defendant's scheme to defraud solely because of the promises made by the defendant in this Agreement. If defendant breaches this Plea Agreement, the United States retains the right to present to a Grand Jury for Indictment all other evidence relating to his conduct in the scheme to defraud. Defendant expressly waives his right to challenge the initiation

of the original or additional charges against him if he breaches this Agreement. Defendant expressly waives his right to assert a statute of limitations defense if the original or additional charges are initiated against him following a breach of this Agreement.

7. Withdrawal of Plea. The defendant understands that if the Court accepts his plea of guilty and this Plea Agreement, but imposes a sentence which defendant does not like, agree with, or is in opposition to the agreement of the parties, he will not be permitted to withdraw his plea of guilty.

8. Agreed Guideline Applications. With respect to the application of the Sentencing Guidelines to this case, the parties agree as follows:

a. The applicable Guidelines Manual is the one that took effect on November 5, 2003;

b. The applicable guideline is § 2B1.1, which provides for a base offense level of six (6);

c. Pursuant to § 2B1.1(b)(H), fourteen (14) levels are added because the loss amount was more than \$400,000;

d. The government will concur with any other special offense characteristics proposed by the Presentence Investigation Reports. Defendant may contest any special offense characteristics proposed by the Presentence Investigation Report at sentencing subject to the provisions of this Agreement.

e. The defendant timely notified the United States of his intention to enter a plea of guilty thereby permitting the Government and the Court to allocate resources efficiently. Consequently, he is entitled to a two-level reduction pursuant to § 3E1.1(a) of the Sentencing Guidelines. Moreover, the government intends to notify the

Court that the defendant has demonstrated further assistance, thus entitling him to an additional decrease of one (1) level pursuant to § 3E1.1(b);

f. There is no agreement between the parties regarding the defendant's Criminal History Category. The parties agree that the Court will determine the defendant's Criminal History Category after receipt of the presentence report prepared by the United States Probation Office;

g. The defendant understands any suggested estimate of the parties with respect to the guidelines computation set forth in this Agreement does **not** bind the Court or the United States Probation Office with respect to their computation of the appropriate guideline levels. Additionally, failure of the Court to accept any proposed stipulations will not provide the defendant with a basis to withdraw his plea of guilty;

h. The United States agrees not to seek an upward departure from the Guidelines and the defendant agrees not to seek a downward departure from the Guidelines. The agreement by the parties not to seek departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law;

i. The defendant consents to judicial fact-finding by a preponderance of the evidence of all matters pertaining to a determination of the defendant's sentence under the United States Sentencing Guidelines. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the Indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence under the Guidelines, may consider any reliable information, including hearsay; and

j. The defendant understands and agrees that the factual admissions made by the defendant in paragraphs 2 and 3 of this Plea Agreement and that will be made during his plea colloquy, support imposition of the agreed Guideline calculation set forth above.

k. The defendant agrees to the revocation of his Missouri Funeral Director's License, No. 005423, his Missouri Embalmer License, No. 007045, and his Funeral

Establishment License, NO. 2001010377 in conjunction with proceedings undertaken by the Missouri Attorney General's Office.

9. Effect of Non-agreement on Guideline Applications.

There are no agreements between the parties with respect to any Sentencing Guideline issues other than those specifically listed in Paragraph 8, and its subsections. As to any other issues which may be found to exist, the parties are free to advocate their respective positions at the sentencing hearing.

10. Change in Guidelines Prior to Sentencing. Defendant agrees that if any applicable provision of the Guidelines changes after entry of this Plea Agreement, then any request by defendant to be sentenced pursuant to those changed Guidelines will make this Plea Agreement voidable by the United States. In such circumstance, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this Plea Agreement.

11. Waiver of Constitutional Rights. Defendant, by pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

a. the right to plead not guilty and to persist in a plea of not guilty;

b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;

c. the right to a jury trial, and at that trial, the right to the assistance of counsel;

d. the right to confront and cross-examine witnesses against him;

e. the right to compel or subpoena witnesses to appear on his behalf; and

f. the right to remain silent at trial, at which such silence could not be used against him.

12. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges that by pleading guilty pursuant to this Plea Agreement he waives his right to appeal a finding of guilt following acceptance of this Plea Agreement. Defendant further acknowledges that if his guilty plea is accepted by the Court there will not be a trial of any kind.

b. The defendant agrees not to challenge on appeal or otherwise challenge the constitutionality or legality of the Sentencing Guidelines. The defendant understands and acknowledges that his sentence will be determined and imposed pursuant to those Sentencing Guidelines and appropriate statutes. Defendant is aware that a sentence imposed under the Sentencing Guidelines does not provide for parole. The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum established for the offense and expressly waives the right to appeal his sentence, directly or collaterally, on any ground. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a).

c. The parties expressly waive the right to appeal or collaterally attack by post-conviction motion any sentencing issues which have been addressed and agreed upon in this Plea Agreement including, by way of example and not by way of limitation, the applicability of certain Sentencing Guidelines provisions as set forth in paragraph 12. Each party retains the right to appeal only sentencing issues which have not been agreed upon or which have not been specifically addressed in the Plea Agreement. The defendant expressly waives the right to appeal or collaterally attack by post-conviction motion all other issues.

13. Waiver of FOIA Request. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

14. Waiver of Claim for Attorney's Fees. The defendant waives all claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

15. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release that may be set, or violates any term of this Plea Agreement between the signing of this Plea Agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this Plea Agreement, the United States will be released from its obligations under this Plea Agreement.

16. Defendant's Representations. Defendant acknowledges that he has entered into this Plea Agreement freely and voluntarily, and with the advice and concurrence of counsel. He further acknowledges that no threats or promises, other than the

promises contained in this Plea Agreement, have been made by the United States to induce him to enter his plea of guilty.

17. No Undisclosed Terms. The United States and defendant acknowledge that the above-stated terms and conditions constitute the entire Plea Agreement between the parties and deny the existence of any other terms and conditions not expressly stated herein.

DATED this ____ day of _____ 2004.

Todd P. Graves
United States Attorney

by

K. Michael Warner #11880
Assistant United States Attorney

I have consulted with my attorneys and fully understand all my rights with respect to the offense charged in the Indictment. Further, I have consulted with my attorneys and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this Plea Agreement and carefully reviewed every part of it with my attorneys. I understand this Plea Agreement and I voluntarily agree to it.

Roger Dean Newman
Defendant

I am defendant Roger Dean Newman's attorney. I have fully explained to him his rights with respect to the offenses charged in the Indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which may apply in this case. I have carefully reviewed every part of this Plea Agreement with him. To my knowledge, Mr. Newman's decision to enter into this Plea Agreement is an informed and voluntary one.

Larry Pace
Assistant Federal Public Defender
Attorney for Defendant